

GENERAL ELECTRIC CO.
NELLIE McLAUGHLIN

IBLA 81-629
81-657

Decided June 16, 1981

Appeals from decisions of the Montana State Office, Bureau of Land Management, declaring various mining claims abandoned and void. M MC 41093 through M MC 41152.

Reversed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

The filing of evidence of assessment work, required by 43 CFR 3833.2-1(a), for any assessment year may be submitted at any time after the work is performed during the assessment year through Dec. 30 following the end of the assessment year.

Thus, filing on Oct. 5, 1979, for the 1980 assessment year which began on Sept. 1, 1979, satisfies the requirement of filing on or before Dec. 30, 1980.

APPEARANCES: James A. Poore, Esq., Cleveland, Ohio, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

General Electric Company and Nellie McLaughlin have appealed two decisions of the Montana State Office, Bureau of Land Management (BLM), declaring various mining claims 1/ abandoned and void for failure to

1/ General Electric owns mining claims M MC 41093 through M MC 41131 and leases mining claims M MC 41132 through M MC 41152 from Nellie McLaughlin. See appendix for a complete list of the claims.

file timely evidence of annual assessment work for the claims on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

In their statement of reasons, appellants urge that evidence of assessment on the claims for assessment year 1980 was filed with the Montana State Office on October 5, 1979.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Departmental regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

An assessment year runs from noon September 1 of any given year through noon on September 1 of the following year. See 30 U.S.C. § 28 (1976). Thus, the assessment year preceding December 30, 1980, ran from noon on September 1, 1979, through noon September 1, 1980. Examination of the case files herein reveals that assessment work was done on appellants' claims after September 1, 1979, for assessment year 1980 and that evidence of that work was filed with BLM on October 5, 1979. There is nothing in FLPMA or the regulations which precludes a mining claimant from filing the required evidence for a particular assessment year as soon as the work is accomplished. We find that appellants have complied with the requirements of FLPMA for 1980. 2/

2/ Presumably BLM viewed the Oct. 5, 1979, assessment filings as a notice of intention to hold the claims for 1979 in order to satisfy the requirement of 43 CFR 3833.2-1(a) that either evidence of assessment work for the preceding assessment year (1979) or a notice of intention to hold the claims be filed by Oct. 22, 1979.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

Claims owned by appellant, General Electric Company.

<u>Claim Name</u>	<u>Serial Number</u>
Ivanhoe No. 1	M MC 41093
Ivanhoe No. 2	M MC 41094
Ivanhoe No. 3	M MC 41095
Ivanhoe No. 4	M MC 41096
Ivanhoe No. 5	M MC 41097
Ivanhoe No. 6	M MC 41098
June	M MC 41099
June 1	M MC 41100
Oofda (fraction)	M MC 41101
Oofda #2	M MC 41102
Oofda #3	M MC 41103
Oofda #4	M MC 41104
Oofda #5	M MC 41105
Oofda #6	M MC 41106
Oofda #7	M MC 41107
Oofda #8	M MC 41108
Oofda #9	M MC 41109
Oofda #10	M MC 41110
Oofda #11	M MC 41111
Oofda #12	M MC 41112
Oofda #13	M MC 41113
Oofda #14	M MC 41114
Oofda #15	M MC 41115
Oofda #16	M MC 41116
Oofda #17 (fraction)	M MC 41117
Oofda #18	M MC 41118
Oofda #19	M MC 41119
Red Button	M MC 41120
Red Button #2	M MC 41121
Red Button #3	M MC 41122
Red Button #5	M MC 41123
Red Button #6	M MC 41124
Red Button #9	M MC 41125
Red Button #10	M MC 41126
Red Button #12	M MC 41127
Red Button #13	M MC 41128
Red Button #16	M MC 41129
Red Button #17	M MC 41130
Red Button #22	M MC 41131

Claims owned by appellant, Nellie McLaughlin and leased to General Electric Company.

<u>Claim Name</u>	<u>Serial Number</u>
Black Bettie	M MC 41132
Blue Rock	M MC 41133
Fox (amended)	M MC 41134
Fox No. 2	M MC 41135
Lost Copper	M MC 41141
Lost Copper No. 2	M MC 41142
Mammoth	M MC 41143
Moose	M MC 41144
Red Metal	M MC 41145
Red Raspberry	M MC 41146
Star No. 1	M MC 41147
Star No. 2	M MC 41148
Star No. 3	M MC 41149
Tin Horn	M MC 41150
Trail	M MC 41151
Trail No. 2	M MC 41152

